IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Crl. Revision No. 119 of 2003
Date of decision:- 03.09.2012

Jai Dev

....Petitioner

Vs.

State of Haryana

....Respondent

CORAM: HON'BLE MR. JUSTICE A.N. JINDAL

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Present:- Ms. Monika Thakur, Advocate,
for the petitioner.

Mr. Ajay Gupta, Addl. A.G., Haryana,
for the respondent.

A.N. JINDAL, J (ORAL)

Sub Divisional Judicial Magistrate, Fatehabad, vide judgment dated 04.08.1999, convicted the accused-petitioner (hereinafter referred as 'the petitioner') under Section 16 (1) (a) (i) read with Section 7 of the Prevention of Food Adulteration Act, 1954 (hereinafter referred as 'the Act') and sentenced him to undergo rigorous imprisonment for six months and to pay a fine of Rs.1000/-. The appeal against the said judgment was dismissed by the Additional Sessions Judge, Fatehabad, on 13.01.2003.

The factual background of the case is that on 25.11.1992, Shri Khushi Ram, Government Food Inspector, while exercising the powers under the Act, found the petitioner in possession of 10 Kg 'dhania'. He while disclosing his identity that

he was Government Food Inspector, purchased 450 grams “whole dhania” from him on payment of necessary price through notice (Ex.PA) in the presence of Dr. Sant Lal Verma, Medical Officer, CHC, Bhattu Kalan. After mixing the contents of 'dhania', so purchased, he divided the same into three equal parts and put it into three dry and clean bottles, which were stoppered, securely fastened and then wrapped in strong thick paper, which was secured by means of paper strips bearing code number and twine. Bottles were sealed. One of the samples, sent to the Local Health Authority, was found to be contaminated, as it was containing six rat droppings against the maximum limit of five pieces per Kilogram.

On receipt of the report of Public Analyst, a complaint was instituted before the trial Court and a notice under Section 13 (2) of the Act was sent to the accused informing him that, if so desired, he could make an application before the Court to get the second sample re-analysed from the Central Food Laboratory, Mysore. Accordingly, the petitioner moved an application for re-analysis of the second sample. Thereafter, the second sample was got re-analysed from Central Food Laboratory, Mysore. Sh. V.K. Nagaraja, Director, Central Food Laboratory, vide his report dated 19.03.1993, had observed as under:-

“1.	Physical appearance	:	Dhania whole free from mould growth but not free from insect infestation (Fruit fly).
2.	Proportion of extraneous matter including chaff, dust, dirt.	:	1.61% by weight

3.	Amount of insect damaged matter	:	1.52% by weight
4.	Added colouring matter:		Absent.
5.	Test for presence of sulphurdioxide.”	:	Negative

The trial Court, after examining the entire evidence on record, convicted the petitioner and sentenced him accordingly. The appeal preferred by him was also dismissed.

Learned counsel for the petitioner, while assailing the judgment of conviction, stated that the Director Central Food Laboratory, in his report (Ex.PW4/B) did not indicate, as to if there were any insects and that the sample was unfit for human consumption. It was also not mentioned, if the sample was misbranded or adulterated. The sample was also found free from any colouring. It was further urged that the sample was found to be containing insect damaged matter to the extent of 1.52% by weight, whereas under the Act such matter is allowed up to 5% by weight. It was further submitted that the first Appellate Court has taken wrong view of the matter while holding that the sample did not conform to Rule A.05.08 contained in Appendix-B of the Act and as such, the same falls within the definition of 'adulterated food'.

To the contrary, learned State Counsel has urged that since the insect damaged matter was found by the Central Food Laboratory in its report (Ex.PW4/B), therefore, presumption would be that the sample is adulterated.

Heard. Before setting to decide, as to whether the sample fell within the purview of “adulterated”, I deem it

appropriate to reproduce Rule A.05.08 of the Act, which reads as under:-

> "A.05.08-CORIANDER (Dhania) WHOLE means the dried mature fruits (seeds) of Coriandrum sativum (L). The proportion of extraneous matter including dust, dirt, stones, lumps of earth, chaff, stalk, stem or straw, edible seeds of fruits other than coriander and insect damaged seeds shall not exceed 5% by weight."

According to the aforesaid Rule, as amended up to date, the sample of 'dhania' could be said to be not adulterated, if it is free from mould leaving or dead insects. On examination of the report of Central Food Laboratory (Ex.PW4/B), it transpires that there was no mould living or dead insects or red contamination found in the sample. The product was also found free from any added colour matter. The insects damaged matter was found only to the extent of 1.52% by weight as against the maximum limit of 5% by weight as inserted by G.S.R. 1417 dated 20.09.1976 (with effect from 02.10.1976. Since no insect or symptom of contamination and insect fragmentation were found and no such report was made by the Central Food Laboratory, Mysore that the sample was unfit for human consumption, it would be difficult to hold that the sample did not conform to Rule A.05.08 of the Act. The Central Food Laboratory has only observed that the sample was adulterated in as much as it is 'insect infested'. Dr. S.L. Verma (PW-3) has stated that no insect infestation was seen at the time of taking the sample. The sample of 'dhania' was taken on 04.01.1993 and it was examined by the Central Food Laboratory, Mysore on 19.03.1993. Thus, the delay in examining the sample could be the cause of presence of insect damaged

matter in the sample. Still, that matter was not examined with a view point of assessing, as to "if it was insect damaged matter or it was otherwise some sort of powder." Thus, in the absence of any specific report that it was an insect damaged matter, no such opinion could be formed. Moreover, no independent witness was examined. As such, in the absence of a report indicating any such violation of the Rule, which may render the sample as adulterated, it is difficult to uphold the conviction, as recorded by both the Courts below.

Resultantly, this appeal is accepted; the impugned judgment is set aside and the petitioner-accused is acquitted of the charges framed against him.

(A.N.JINDAL)
JUDGE

September 03, 2012
ajp